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CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 919

Introduced by Assembly Member Nava

February 26, 2009

An act to add Chapter 7.5 (commencing with Section 750) to Division 1 of Title 1 of the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 919, as amended, Nava. Corporations: political activities: shareholder objections.

Existing law provides a shareholder dissenter's rights with respect to specified corporate transactions, including mergers and sales of assets, if a shareholder does not vote in favor of the transaction and notifies the corporation, as specified, that the shareholder dissents, and requires the corporation to pay the dissenting shareholder cash in the amount of the fair market value of the shareholder's dissenting shares, as specified, in lieu of the other consideration that a nondissenting shareholder is entitled to receive.

The Political Reform Act of 1974 provides for the regulation of political campaign financing, including the reporting and disclosure of campaign contributions and expenditures. Under the act, elected officers,

candidates for elective office, and campaign committees are required to file periodic campaign statements that disclose specified information for specified reporting periods, including the amount of contributions received and the identities of donors.

This bill would require a corporation, as defined, that makes a contribution or expenditure to, or in support of, or in opposition to, a candidate, ballot measure campaign, or a signature-gathering effort on behalf of a ballot measure, political party, or political action committee to report those contributions or expenditures to shareholders by specified means, including posting the report on the corporation’s Internet Web site, if any, and to refund to an objecting shareholder, *in the form of a dividend*, a pro rata share of *the* dollar value of those contributions or expenditures, based on the shareholder’s share ownership. The bill would define, among other terms, “objecting shareholder” and “political activity” for these purposes.

This bill would provide for a civil cause of action, including recovery of reasonable attorney’s fees, by a shareholder against a corporation for violations of the bill’s provisions. The bill would require a corporation to maintain records that include copies of the reports on its political activities for 5 years, and to make copies of these reports available to the Secretary of State upon request. The bill would also state findings and declarations of the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Corporations make substantial political contributions and
- 4 expenditures to support and oppose candidates, ballot measures,
- 5 political parties, and political causes. However, decisions to use
- 6 corporate funds for political contributions and expenditures are
- 7 usually made by corporate boards and executives, rather than the
- 8 shareholders who own the corporations.
- 9 (b) Shareholders have a right to know how corporations are
- 10 spending shareholder funds to make political contributions and
- 11 expenditures to support or oppose candidates, ballot measures,
- 12 political parties, and political causes.

1 (c) Most shareholders have no means by which they may learn
2 of, influence, or object to the political activities of the corporations
3 in which they have invested. Moreover, most shareholders have
4 no means by which they may demand reimbursement or demand
5 that their invested funds not be used to make political contributions
6 or expenditures to support candidates, ballot measures, political
7 parties, or political causes to which the shareholders are opposed.

8 (d) By limiting the extent to which corporate political
9 contributions and expenditures may be regulated, the United States
10 Supreme Court, through its decision in *Citizens United v. Federal*
11 *Election Com'n* (2010) 130 S.Ct. 876, has increased the need for
12 greater accountability of corporations to their shareholders with
13 regard to political contributions and expenditures.

14 (e) The *Citizens United* decision was handed down in January
15 2010, but the debate over whether the invested funds of
16 shareholders should be used for political activities without their
17 consent is not a new one. In 1905, President Theodore Roosevelt
18 said, “All contributions by corporations to any political committee
19 or for any political purpose should be forbidden by law; directors
20 should not be permitted to use stockholders’ money for such
21 purposes.”

22 (f) It is the intent of the Legislature in enacting this act to protect
23 *California* shareholders from having portions of their investments
24 used for political activities that ~~the~~ *those* shareholders do not
25 support. *This measure provides this protection by requiring*
26 *corporations to disclose political activities during the previous*
27 *year and by giving California shareholders the right to opt out of*
28 *having their pro rata portion of corporate funds used for political*
29 *activity in the current year.*

30 SEC. 2. Chapter 7.5 (commencing with Section 750) is added
31 to Division 1 of Title 1 of the Corporations Code, to read:

32

33 CHAPTER 7.5. POLITICAL OBJECTIONS OF SHAREHOLDERS

34

35 750. As used in this chapter, the following terms have the
36 following meanings:

37 (a) “Ballot measure” means a constitutional amendment or other
38 proposition that is submitted to a popular vote at an election by
39 action of a legislative body, or that is submitted or is intended to
40 be submitted to a popular vote at an election by initiative,

1 referendum, or recall procedure, whether or not it qualifies for the
2 ballot.

3 (b) “Corporation” means any of the following:

4 (1) A publicly held corporation with shareholders.

5 (2) An entity in which a corporation with shareholders has an
6 equity interest.

7 (3) The parent corporation of a subsidiary or affiliate of a
8 corporation with shareholders.

9 (c) “Objecting shareholder” means a shareholder who informs
10 the corporation that the shareholder ~~does not wish the pro rata~~
11 ~~value of the shareholder’s shares to be used~~ *opposes the use of*
12 *moneys from the corporation’s treasury* for political activities.

13 (d) “Political activity” means a contribution or expenditure made
14 to, or in support of, or in opposition to, a candidate, ballot measure
15 campaign, signature-gathering effort on behalf of a ballot measure,
16 political party, or political action committee.

17 (e) “Public corporation” means a corporation that is required to
18 file periodic reports pursuant to Section 13(a) or 15(d) of the
19 Securities Exchange Act of 1934, as amended (15 U.S.C. Secs.
20 78m(a), 78o(d)).

21 ~~(f) “Shareholder” has the same meaning as set forth in Section~~
22 ~~185.~~

23 *(f) “Shareholder” means one who is a holder of record of*
24 *shares, as defined in Section 184, that are of a class of shares that*
25 *has voting rights, and whose principal address is within this state.*

26 751. A corporation that has shareholders with ~~legal residency~~
27 *principal addresses* in California and that engages in political
28 activity shall do all of the following:

29 (a) (1) Within 30 days after the close of the corporation’s fiscal
30 year, the corporation shall prepare a report entitled “Political
31 Activity Report” describing all political activity by the corporation
32 during that fiscal year and provide a written copy of the report to
33 the corporation’s California shareholders. The report shall include
34 all of the following:

35 (A) A description of the political activities, the intended results
36 of those activities, and the anticipated benefits of those activities
37 to the corporation’s shareholders.

38 (B) The name of the person, candidate, committee, or political
39 party, or a description of the political cause, to which each
40 contribution or expenditure was made.

1 (C) The aggregate amount of the contribution or contributions
2 and expenditure or expenditures for each candidate, ballot measure
3 campaign, signature-gathering effort on behalf of a ballot measure,
4 political party, or political action committee.

5 (D) If a contribution or expenditure was made in support of or
6 in opposition to a candidate, the office sought by the candidate
7 and the political party affiliation of the candidate.

8 (E) If a contribution or expenditure was made for or against a
9 ballot measure, a description of the ballot measure and a statement
10 as to whether the contribution or expenditure was made in support
11 of or in opposition to the ballot measure.

12 (2) A public corporation is deemed to have complied with this
13 subdivision if it includes the report required by paragraph (1) in
14 its annual report to shareholders under a separate caption entitled
15 “Political Activity Report,” if the annual report is provided to
16 shareholders within 90 days of the fiscal yearend.

17 (3) If the corporation maintains an Internet Web site, the
18 corporation shall post the report required by this subdivision on
19 its Internet Web site.

20 (b) This section shall not apply to a corporation’s use of
21 segregated accounts, political action committees, or political
22 committees, as long as the funds in those accounts or committees
23 come from shareholders, board members, or employees of the
24 corporation who, as individuals, choose to contribute to those
25 accounts or committees.

26 752. (a) A corporation required to submit a report pursuant to
27 Section 751 shall notify each shareholder, in writing, using the
28 same mailing used for the Political Activity Report, that the
29 shareholder has the right to object to the use of corporate funds
30 ~~equaling the pro rata value of the shareholder’s shares~~ for political
31 activities for the fiscal year that directly follows the year to which
32 the Political Activity Report pertains. The written notification shall
33 inform the shareholder of the appropriate procedure for objecting.

34 (b) The corporation shall give each shareholder a minimum of
35 60 days following receipt of the notification required by
36 subdivision (a) to file a notice that he or she is objecting. A
37 shareholder who fails to file a notice of objection within the
38 timeframe established by the corporation shall be deemed to have
39 consented to the use of corporate funds ~~equaling the pro rata value~~
40 ~~of the shareholder’s shares~~ for political activities.

1 (c) At the end of the fiscal year in which a shareholder has
2 objected pursuant to subdivision (b), the corporation shall calculate
3 the objecting shareholder's pro rata share of the total dollar value
4 of the political activities in the previous fiscal year, and shall return
5 that amount to the shareholder in the form of a dividend. The
6 objecting shareholder's pro rata share shall be determined by
7 dividing the total dollar value of the political activities in the
8 previous fiscal year by the number of outstanding shares, and
9 multiplying the result by the number of shares held by the objecting
10 shareholder *on the date the determination is made. The corporation*
11 *may choose any date during the year to determine the ownership*
12 *of the shares.*

13 (d) Only shares owned by an objecting shareholder at the time
14 of the ~~objection~~ *calculation pursuant to subdivision (c)* shall be
15 used in the fiscal yearend calculation pursuant to subdivision (c).

16 (e) A corporation shall not be required to provide the ~~notice of~~
17 ~~objection notification pursuant to subdivision (a)~~ to a shareholder
18 who does not own shares ~~at the beginning of the fiscal year and~~
19 ~~subsequently purchases shares after that date.~~ *on the date the*
20 *notification is given.*

21 753. (a) A corporation subject to Section 751 shall maintain
22 records of its political activities, including the report required by
23 subdivision (a), for a minimum of five years.

24 (b) Upon a request by the Secretary of State, a corporation shall
25 file with the Secretary of State a copy of each report produced
26 pursuant to subdivision (a) of Section 751.

27 754. No provision of Section 751 or 752 shall be construed to
28 relieve a corporation of its obligations under existing law, including
29 but not limited to, the following:

30 (a) Section 604, or a successor statute or regulation.

31 (b) Any state or federal statute or regulation that regulates the
32 solicitation of proxies.

33 (c) With respect to a corporation with an outstanding class of
34 securities registered pursuant to Section 12 of the Securities
35 Exchange Act of 1934, as amended (15 U.S.C. Sec. 781), the proxy
36 rules promulgated under that act.

37 755. (a) A violation of Section 751 or 752 by a corporation
38 shall create a civil cause of action for damages ~~against the~~
39 ~~corporation,~~ *or to enjoin further violation and order payment*

1 *pursuant to this chapter*, that may be brought by any shareholder
2 of the corporation.

3 (b) Reasonable attorney's fees and costs may be recovered by
4 the shareholder for any action brought pursuant to this section.

5 (c) The remedies provided in this section are in addition to any
6 other rights or remedies available under any other provision of
7 law.

8 756. The provisions of this chapter are severable. If any
9 provision of this chapter or its application is held invalid, that
10 invalidity shall not affect other provisions or applications that can
11 be given effect without the invalid provision or application.